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January 27, 2016

By Email and ECF

Jaime Turton  
United States Probation Officer  
United States Department of Probation  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Ahmed, et al. 12 CR 661 (S-2) (JG)

Dear Mr. Turton:

Below find proposed changes to the PSR about which the government and defense counsel are in agreement. We have also included certain requested changes by the defendants about which the government takes no position. Pursuant to the Court's directive during sentencing on January 15, 2016, we request that you make these changes to the final PSRs for Mr. Ahmed and Mr. Yusuf. While some of these changes are individual to either Mr. Ahmed or Mr. Yusuf, we ask, in the interest of continuity, that the changes be made to both PSRs. We also ask, also pursuant to the Court's agreement at sentencing, that pages 1-8 of the sentencing transcript be attached to the PSR. (The Court filed this portion of the transcript as an attachment to the judgments; ecf documents ## 343-1 and 346-1 are attached to this letter.)

**Joint Changes pertaining to both Ahmed and Yusuf:**

1. The defendants were not formally extradited to the United States. For this reason, we request that any reference to the defendants' extradition be removed from the PSRs and replaced with the following: "*arrested by the United States government and transferred in custody.*" See Joint Objections, PSR p. 1, 2, ¶¶ 83 (Yusuf and Ahmed); ¶ 84 (Hashi), ¶ 93 (Yusuf), ¶ 95 (Ahmed), ¶ 98 (Hashi), ¶ 96 (Ahmed).
2. The defendants' race or ethnicity should not be described as African American and should instead be characterized as "*Black*" or "*Somali*."
3. Any reference to the time period of the offense should be consistent with the indictment as follows: "*In or about and between April 2008 and August 2012, both dates being approximate and inclusive...*" (See e.g. Ahmed PSR ¶¶ 1, 30.)

4. Any reference to the 2013 Westgate mall attack, which took place after the defendants were in custody in the United States, should be removed. (See e.g. Ahmed PSR ¶7.)
5. The government agrees that there is no evidence that the defendants participated in any beheadings, and we ask that ¶3 of the PSR be amended as follows: “Al-Shabaab frequently beheaded TFG and AMISOM fighters, to instill fear in their adversaries, *however there is no evidence to suggest that any of the defendants participated in any beheadings.*”
6. With respect to ¶6, which describes the role of foreign fighters, the parties ask that the language be modified as follows: “*that some ‘foreign fighters,’ with their foreign passports, were given combat training in Somalia and certain of those foreign fighters were then sent elsewhere in support of external terrorist plots against Western countries and their allies in the region. While the defendants were al-Shabaab foreign fighters, there is no evidence that the defendants participated in or otherwise supported any external terrorist plots against Western countries and their allies in the region.*”
7. With respect to ¶11, the parties ask that Probation replace the word “group” with “number” in the phrase “growing group of young men in Sweden.” The government also asks that Probation fix the location of Rinkeby, which is “*a suburb of Stockholm*” and not “located in the Northern part of the country” and asks that ¶ 11 should be revised to include the fact that many of the young men referred to in this paragraph also lived in “*Gothenburg, the second largest city in Sweden.*”
8. The parties agree that Yusuf’s alleged alias, “Mohammed Abdulkadir,” should be removed from the PSR.
9. With respect to the paragraph pertaining to Mr. Hashi’s trip to Damascus in May 2007 (¶41 in Ahmed’s PSR), the parties ask that the following parenthetical that identifies the names “Ismail” and “Yusef” as “aliases of Ahmed and Mohamed Yusuf, respectively” be removed. We further request the inclusion of the following sentence: *There is no evidence that Mohamed Yusuf or Ali Yasin Ahmed were in Syria at the same time as Mr. Hashi.*
10. ¶14 of Ahmed and Yusef’s PSRs states that Ahmed and Yusef “later received advanced “commando” training at another camp.” We request that this language be deleted and replaced with the following: “Ahmed and Yusuf later received advanced “commando” training *in a separate part of the Buled Gadud training camp.*”

**Joint Changes pertaining to Yusuf:**

11. We request that Yusuf’s name be removed from the second sentence of ¶ 19 of the PSR.

**Changes requested by Yusuf on which the government takes no position:**

12. Yusuf has requested modifications to certain “Offender Characteristics” set out in ¶¶ 82, 83, 89, and 92 of the PSR. Specifically:

- ¶ 82: As set forth in this paragraph, the name of Mr. Yusuf’s wife, the ages of Mr. Yusuf’s children, and the time he can speak with his wife are incorrect. The PSR should read, “*On August 21, 2009, the defendant married Kathar Mohamed Moulin (age 23) in Somalia*” .... “*Shueyb Mohamed Yusuf (age 5)*” and “*Khadeja Yusuf (age 4)*.” The last sentence should read: “*Mr. Yusuf can speak with his wife once per month for 15 minutes. (In addition, he is permitted to have one 15-minute call per month with his family in Sweden.)*”
- ¶ 83: “...From 2008 until his arrest for the instant offense on August 5, 2012, he resided in Mogadishu, Somalia, with his second wife and children.” The PSR should read: “*Mr. Yusuf resided in Mogadishu for about one year. Beginning in 2010, he resided in Kismayo and then lived in Merca with his wife until 2012.*”
- ¶ 89: “...Despite his prolonged stay in this housing status, he has displayed no evidence of depression or suicidal ideations, and appears to be adequately adjusting to the placement...” We ask that this paragraph be stricken. The psychological reviews at the MCC SHU are cursory at best and do not reliably measure the long-term and devastating effects of prolonged isolation in solitary confinement.
- ¶ 92: Mr. Yusuf is not fluent in Arabic

**Changes requested by Ahmed on which the government takes no position:**

13. Ahmed objects to the spelling of “Gohro” in PSR ¶ 77. The correct spelling is “Johro”.

14. Ahmed objects to various issues in PSR ¶¶ 82, 88, 94, and 97, regarding his familial relationships, linguistic capability, and reading privileges in the jail. Specifically:

- ¶ 82: (1) “June” should be May. (2) “18-month courtship” should be *5-month courtship*. (3) Mr. Ahmed’s son’s name is *Yazid Ali Yasin*, and his daughter’s name was *Faduma Ali Yasin*.
- ¶ 88: “he can only read a new book once (because the book is destroyed)” It’s not that Mr. Ahmed can only read each book once – he can read the SAME book (and often does) as many times as he likes. It’s just that he can’t read any books that aren’t brand new, and as result, has very limited access to books. Once he (or any other SAMS inmate) is done with a book, that book is destroyed and cannot be used by anyone else. We ask that the paragraph be amended as follows: “As a result, he is confined to his cell all day, he cannot speak to other inmates, his food is brought to his cell, *he has limited access to reading materials, as he is only permitted to read new*

*books periodicals and newspapers, which must be sent to him by his lawyers or family from approved vendors (and are destroyed once he is finished with them), and his telephone privileges are limited to once per month for 30 minutes. Prior to September of 2014, he was permitted only one 15-minute call to his family per month.”*

- ¶ 94: Mr. Ahmed does not speak Swahili.

Thank you for your kind assistance with this important matter. Please provide the parties with the revised PSRs at your earliest convenience.

Sincerely,

Jane Simkin Smith  
David Stern  
Attorneys for MOHAMED YUSUF

Susan G. Kellman  
Sarah Kunstler  
Ezra Spilke  
Attorneys for ALI YASIN AHMED

cc: Counsel of Record via email

1 THE CLERK: United States versus Ahmed, et al.

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3 Ariail, Seth DuCharme and Richard Tucker for the United  
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5 THE COURT: Good afternoon.

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7 Sarah Kunstler for Ali Ahmed who is in the courtroom.

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9 MR. STERN: Good afternoon. David Stern and Jane  
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15 Everyone can have a seat.

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21 Have you been over, Ms. Kellman and Mr. Stern, have  
22 the two of you seen the presentence report and the two addenda  
23 to it?

24 MS. KELLMAN: Yes, Your Honor.

25 MR. STERN: Yes.

1 THE COURT: Okay. Gentlemen, Mr. Yusuf and  
2 Mr. Ahmed, let me address you individually.

3 Have you both had an opportunity to review these  
4 documents?

5 Mr. Ahmed?

6 DEFENDANT YUSUF: Yes.

7 THE COURT: Mr. Yusuf?

8 DEFENDANT YUSUF: Yes.

9 THE COURT: You said yes to both.

10 MR. ARIAIL: I think Mr. Ahmed didn't answer.

11 THE COURT: Mr. Ahmed, have you seen these documents  
12 or had them translated for you?

13 DEFENDANT AHMED: Yes, I have.

14 THE COURT: Okay. And have you had enough time to  
15 go over them with your lawyers, Mr. Ahmed?

16 DEFENDANT AHMED: Yes.

17 DEFENDANT YUSUF: Yes.

18 THE COURT: Okay. There's a lot of back and forth  
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7 Let's swear the interpreter.

8 THE CLERK: Magna, can you rise and raise your right  
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10 (Interpreter sworn.)

11 THE CLERK: Please state your name for the record.

12 THE INTERPRETER: Magna Czagany.

13 THE CLERK: Thank you.

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1 presentence report, do you really think I need to resolve here  
2 before I have argument about the appropriate sentence?

3 Do you understand the question?

4 MS. KELLMAN: Your Honor, I think at least with  
5 respect to Mr. Ahmed, I would say that the answer is if what  
6 Your Honor is focusing on, and I think correctly, are the  
7 first three issues that you highlight, then I'm happy to  
8 restrict my comments to that and I, I have to say I think that  
9 as advocates, we felt the need to respond to everything.

10 THE COURT: I understand.

11 MS. KELLMAN: But I think the Court appropriately  
12 highlights the concerns that affect the sentence in this case  
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14 THE COURT: And just to flesh it out a little bit,  
15 with respect to the heart of the case, I don't think either  
16 side is right necessarily that, you know, it's not irrelevant  
17 that the freedom fighting was done through the vehicle of  
18 al-Shabaab. Some inferences can be drawn that are adverse to  
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21 that the government wants it to carry. I mean, we will argue  
22 about that. But these more particularized objections to the  
23 presentence report I don't really find necessary for  
24 resolution.

25 Put another way, under Rule 32, they don't affect

1 the sentence in my judgment so I don't intend to address them.

2 Mr. Stern, Ms. Smith, do you want to be heard?

3 MR. STERN: Can we just have one second?

4 (Pause.)

5 MR. STERN: I think that's fine with us, Judge.

6 What we would like then is that fact that you just said, they  
7 don't affect your sentence, be put in the presentence report.  
8 Of course these reports follow them wherever they go so to  
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10 quibbles after a while, but we would like it then to be  
11 reflected, wherever they go, the sentence was based on the  
12 things we discussed in court here today and was not influenced  
13 by the things you're suggesting don't influence you.

14 THE COURT: All right. Mr. Ariail?

15 MR. ARIAIL: Your Honor, in terms of the objections,  
16 I think we tried, we tried our best to come to agreement where  
17 we could. I think though there are two particular areas I  
18 just want to make sure that I understand Your Honor correctly  
19 as saying you are considering which are the, without reference  
20 to the paragraphs, the November 2008 intercepts or wiretaps  
21 that were conducted in Sweden and also the later intercepts in  
22 2009 and 2010. I just want to make sure that those are, those  
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19 THE PROBATION OFFICER: Yes, Your Honor.

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21 Mr. Ariail, Mr. DuCharme, and Mr. Tucker and Mr. Turton and  
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